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OFFICE OF PETITIONS

In re Patent No. 7,910,544	:	
Gardella et al.	:	DECISION ON APPLICATION
Issue Date: 03/22/2011	:	FOR PATENT TERM ADJUSTMENT
Application No. 10/564,744	:	AND
Filed: 03/03/2006	:	NOTICE OF INTENT TO ISSUE
Attorney Docket No.	:	CERTIFICATE OF CORRECTION
00786/540002	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed on May 19, 2011, which is treated as a petition under 37 CFR 1.705(d). Patentees request that the Patent Term Adjustment for the above-identified patent be set at 971 days. For the reasons stated below, the petition is treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred seventy (970) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED to the extent indicated.**

On March 22, 2011, the above-identified application matured into U.S. Patent No. 7,910,544. The instant request for reconsideration filed on May 19, 2011, was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 930 days.

Patentees contend that that the 61 day reduction in patent term adjustment for the filing of a request under 37 CFR 1.48(a) after the mailing of the notice of allowance is incorrect. Patentees contend that the period of reduction for the filing of the request under 37 CFR 1.48(a) should be 20 days rather than 61 days.

Patentees' contention is persuasive, to the point indicated.

37 CFR 1.704 states, in pertinent part:

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

...

(10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or

(ii) Four months; and

...

(emphasis added)

Accordingly, applicant delay is calculated as the lesser of the number of days between the date (not the day after the date) the amendment under 37 CFR 1.312 is filed, and the date the Office mails a communication in response to the amendment under 37 CFR 1.312, or four (4) months.

A review of the record reveals that on September 15, 2010, an amendment or other paper (i.e., request under 37 CFR 1.48(a)) after the mailing of the notice of allowance was filed. A paper in response to the amendment or other paper filed after the mailing of the notice of allowance was mailed on October 5, 2010, 21 days (not 20 days) after the date the amendment after the mailing of the notice of allowance was filed. The 61 day

period of reduction for applicant delay will be removed and a 21 day period of reduction will be entered.

The patent term adjustment at the time of issuance of the patent is 970 days (493 days of Office delay + 794 days of three years delay - 74 overlapping days - 243 (61 + 14 + 25 + 61 + 120 + 2)) days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by nine hundred seventy **(970)** days.

Telephone inquiries regarding this matter should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,910,544 B2

DATED : Mar. 22, 2011

DRAFT

INVENTOR(S) : Gardella et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 930 days.

Delete the phrase "by 930 days" and insert – by 970 days--